



February 24, 1999

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-0531

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122357.

The City of Dallas Police Department (the “department”) received a request for a “complete copy of the personnel file/records” of a former employee. You seek to withhold some of the requested information under sections 552.101, 552.108 and 552.117.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor
that deals with the detection, investigation, or prosecution of crime . . .
if:

(1) release of the information would interfere with the
detection, investigation, or prosecution of crime[.]

You advise that “a felony charge of tampering with a government record” is pending against the subject of the requested personnel file information. You seek to withhold under section 552.108 information identifying witnesses whose statements were taken in connection with the alleged offense, including their “names, addresses, and telephone numbers.” Based on your representations, we conclude that you may withhold such witness-identifying information under section 552.108(a)(1).¹

¹We understand you to also claim the “informer’s privilege” with respect to the witness-identifying information. Since we have permitted you to withhold this information under section 552.108(a)(1), we need not address your claim under the informer’s privilege.

You also claim that some of the responsive information must be withheld under section 552.101 of the Government Code in conjunction with V.T.C.S. article 4495b, the Texas Medical Practice Act (the "MPA"). Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act, V.T.C.S. article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked the documents that you must withhold pursuant to article 4495b.

Section 552.101 also incorporates common-law privacy protection. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992); 545 (1990). In Open Records Decision No. 545, this office considered personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common-law privacy. Open Records Decision No. 545 at 4-5.

The information you submitted includes records of the employee's participation in health, dental, and other insurance programs through the department. To the extent that this information reflects the employee's choice to participate in and make contributions toward *optional* programs of that nature, it must be withheld. *See*, Open Records Decision Nos. 600 (1992).

Finally, you note that some of the responsive information is subject to sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public

employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. You must withhold this information if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987). Also, social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code. Except as noted above, you must release the information responsive to the request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref:: ID# 122357

Enclosures: Submitted documents

cc: Ms. Charlene Hanson
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(w/o enclosures)